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Report : Memorial of H. Barney

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IN SENATE OF THE UNITED STATES.

MARCH 20, 1844.

Submitted, and ordered to be printed.

Mr. HENDERSON, from the Committee on Private Land Claims, made the following

REPORT :

[To accompany bill S. 127.]

The Committee on Private Land Claims, to whom was referred the memorial of Hiram Barney, have had the same under consideration, and ask leave to report :

The memorial of Hiram Barney represents, that he and other white men, together with several half-breed Indians of the Sac and Fox tribes, are owners in severalty of subdivisions of all that tract of land in the Territory of Iowa, at the junction of the Des Moines and Mississippi rivers, known as the Sac and Fox half-breed reservation, assigned to them by treaty of 4th of August, 1824.

That, in the years 1832 and 1833, this tract, then the exclusive property of these half breeds, was surveyed by Jennifer S. Sprigg, acting under contract with William Clark, superintendent of Indian affairs, dividing the said reservation into sections and quarter sections, in the same manner as the public surveys of the United States, establishing the northern line from river to river, by durable marks and monuments, and ascertaining the quantity of land within the survey to be 119,088.27 acres ; that a map of this survey was returned and filed in the General Land Office ; and the Government of the United States, when subsequently surveying the public lands north of this reservation, and which had been acquired from the Sac and Fox tribes, assumed this northern boundary of Sprigg's survey as rightly established, and bounded the public surveys upon that line.

That, by act of Congress of June 30, 1834, all the reversionary interest of the United States to this reservation was relinquished to the half breeds of the Sac and Fox tribes, with full power to sell and convey according to the laws of the State of Missouri.

After the passage of this act, the petitioner and others purchased large portions of this land, in reference to the previous survey and boundary, and relying, as is alleged, in good faith, upon the survey, as so made and sanctioned by the Government authorities.

In conformity with these views, and entertaining a like opinion of the validity of the boundary and survey of this tract, the Legislature of Iowa, passed a law providing for the partition among the several owners of this

reservation, according to the boundaries established on the north, between the two rivers, and which terminates on the Mississippi river near the town of Fort Madison, and which petitioner avers is the terminus of the northern boundary of Sprigg's survey. This act of the Territory was approved January 16, 1838; since which, the court of chancery, sitting in Lee county, of said Iowa Territory, have decreed a severalty and partition among all the claimants of the entire reservation, according to Sprigg's survey.

The memorialist complains that, by the act of Congress of March 3, 1843, a resurvey of the north boundary of this reservation is directed to be made; and that the act assumes the line, as thereby directed to be run, shall be "*the northern boundary of said reservation.*"

The memorialist protests that this act can subserve no purpose of justice, and can only tend to harass and oppress the owners of this tract of land, throw suspicion upon the true course and locality of their northern boundary line, and involve them in expensive litigation.

The petitioner prays that the said act of March 3, 1843, be repealed, and that the north boundary of said tract be reaffirmed, settled, and determined, by a declaratory act of Congress.

Questions kindred to those arising out of the petition have been several times before Congress, within a few years past; and a report, No. 2, made in the House of Representatives, 1st session 26th Congress, by the Hon. G. Davis, and House Document No. 38, at the 3d session of 27th Congress, have been examined by the committee, as illustrating the subject, and as furnishing considerable testimony in the matter of their investigation.

Two questions are considered to arise out of the subject of this memorial—

1st. Is the northern boundary line of this reservation, as surveyed, marked, and established, by Sprigg, in 1832-'33, in proper conformity with the rights and stipulations by which the half breeds of the Sac and Fox Indians became invested with title to this reservation?

2d. Or, if *not* in strict conformity to the rights and requirements of the title, has the line been so established, in fact, by the only parties interested who had a right to contest its correctness, as to stamp it with unequivocal indications of a line assented to and agreed upon by the parties, so that the rules of law or sound policy would now forbid its being disturbed?

The line commonly known and regarded as the north boundary of the State of Missouri, and terminating on the Des Moines river, was run in 1816, by John C. Sullivan, under the direction of General William Rector, surveyor general of Illinois and Missouri, as an Indian boundary line. According to Colonel Sullivan's *field notes*, it was supposed and intended *to be a due east and west line*; but it is considered, and perhaps correctly ascertained by subsequent examinations, that the line diverges north of east two and a half degrees.

By act of Congress of June 18, 1838, the southern boundary line of the Territory of Iowa (which is the northern boundary of the State of Missouri) was directed to be ascertained and marked. This order was executed by Albert M. Lea, and reported to the Commissioner of the General Land Office, January 19, 1839; and in that report the divergence north of Sullivan's line is certified.

It is to be observed, however, that it was *six years* before Lea's survey that the half-breed tract was surveyed by Sprigg, under the direction of General Clark, superintendent of Indian affairs; and at that period no sus-

picion or distrust was entertained by any, so far as the committee have been informed, that Sullivan's line, was not due east and west.

The Sac and Fox Indians appear to have owned the lands, or part of them, on both sides of Sullivan's line for many years after it was run.

It was by the treaty of 4th of August, 1824, that they ceded to the United States *all their lands in the State of Missouri* which were south of a line drawn from the northwest corner of the State of Missouri, *east*, to the Mississippi river, excepting therefrom this reservation between the Des Moines and Mississippi rivers. Sullivan's line was then supposed to be the *true* line descriptively called for in this treaty.

In other words, it was then supposed to run from the northwest corner of the State of Missouri, *east*, to the Des Moines river, and required only its extension from the Des Moines to the Mississippi river to conform to the whole call in this treaty.

So verily was Sullivan's line believed to be the true line called for by this treaty, that the United States then adopted it, and, as will be seen, have ever since regarded it as if run in conformity therewith. If this line had been rightfully run, as it was believed to be, of course its extension to the Mississippi river would make the correct northern boundary of the half-breed reservation excepted from this cession. Hence the instructions, per contract of General Clark, to Jenifer S. Sprigg, in 1832, (a copy of which contract is before the committee,) in which Sprigg stipulated to run this line "from the Des Moines eastwardly to the river Mississippi, which said line is in continuation of, and agreeable to, the course of the Indian boundary line run east from a point one hundred miles north from the mouth of the Kansas river." This point one hundred miles north of the Kansas river is the same point otherwise frequently called the northwest corner of the State of Missouri.

This extract from the contract, besides showing Sprigg's survey has been executed as General Clark directed, shows also that General Clark regarded the Indian line (Sullivan's line) as "*run east from a point one hundred miles north of the Kansas river.*"

Yet, notwithstanding the unsuspecting confidence which then and for some years afterward generally obtained as to the correctness of Sullivan's line in pursuing a due east course, the survey executed by Lea, in 1838, in execution of the order to survey the southern boundary of Iowa, has disclosed the fact, so far as his resurvey of the same line may be relied on as more correctly executed than Sullivan's survey, that Sullivan's line does diverge from a due east course two and a half degrees north. Assuming this to be so, the effect is to extend the northern boundary of this half-breed reservation as much further north as the difference between a due east line and this northern divergence of two and a half degrees at this point of distance from the place of departure, and which, it is said, enlarges the reservation about 50,000 acres.

The committee suppose it probable this mistake in Sullivan's line has occurred. And if at the treaty with the Sac and Fox tribes of 4th August, 1824, the line therein stipulated for *from the northwest corner of the State of Missouri, "thence east to the Mississippi river,"* had been re-run, instead of assuming Sullivan's survey as that line, the result would have been to have placed the entire line further south, and, of course, to have contracted this reservation stipulated for in that treaty.

On the supposition, then, that Sullivan's line involves an error, should

the Government of the United States now attempt its correction by a resurvey of the line? The committee think *not*.

First, because, in 1824, this line was as notoriously known to the Sac and Fox Indians as to the whites. And when, by the treaty of 4th August, 1824, they ceded to the United States all their lands south of a line from the northwest corner of the State of Missouri *east* to the Mississippi, they treated in reference to a *known* line, supposed then to run *east*. But, as it run *north* of east, the United States were then gainers by getting *more* land than by their correcting the line they would have done. The United States did not then correct it, when its correction would have been to their prejudice, and favorable to the Sac and Fox tribes; and they should not now, at their own instance, claim to correct it, when the whole object in doing so must be to contract this reservation, to the injury of a remnant of these same tribes.

Another, and the committee deem it an unanswerable reason why the United States should not correct this survey, is, that since the treaty of 1824, the United States, by another treaty, of date 21st September, 1832, with these same Sac and Fox tribes, have expressly adopted this line of Sullivan's, in every extent to which, as a boundary line of the Sac and Fox lands, it could affect the interests of either party.

When this line was *practically* adopted as the one stipulated for in the treaty of 1824, the Sac and Fox tribes owned all the lands bordering on this line *north*, now comprised in the southern border of the Iowa Territory. By the treaty with the Sacs and Foxes of September, 1832, they ceded to the United States the lands north of "*the northern boundary line of the State of Missouri,*" from a point on *said boundary* fifty miles from the Mississippi river. That Sullivan's line was at that time, whether right or wrong, reputed the "*northern boundary of the State of Missouri,*" there is no room for doubt. The State legislation of Missouri shows this expressly, in adjusting her county lines on this border. The survey of Sprigg, extending Sullivan's line to the Mississippi river, as the boundary of this reservation, was being done (perhaps completed) the same year of this last treaty. As fully illustrative of the boundary line which this treaty of 1832 refers to, the public surveys of the lands acquired by this cession, made some three years afterward, were, by instructions from the General Land Office, bounded on Sullivan's line, and the same as extended by Sprigg to the Mississippi river. It is thus apparent, that if the treaty with the Sac and Fox tribes in 1824 would in its terms (as the committee agree it would) have authorized a correction of Sullivan's line, beginning with it at the northwest corner of the State of Missouri, and running thence due *east*, yet as it was not done, and Sullivan's line relied on instead, the treaty of 1832 between the *same parties* adopted this line in express terms, (*calling it the northern boundary of the State of Missouri,*) as the true line, so far as it affected the land boundaries of the parties, respectively. Hence, if the boundary was not correctly ascertained under the treaty of 1824, it is established, conceded, fixed, and recognised by agreement, between *the same parties*, in 1832.

The committee cannot fail to perceive there is no other pretext for a resurvey of the northern boundary of this half-breed reservation *at this time* than a supposition or expectation that, by correcting this line to a *due east*, as per treaty of 1824, the land found between such line *corrected*, and Sprigg's line further north, would become public lands of the United States.

But the committee consider it *demonstrative*, that if the land intervening those two lines is not the property of these half breeds and their vendees, it is yet the *unceded land* of the Sac and Fox tribes; because, by the same rule by which this line is to be corrected to conform to the call of the treaty of 1824, it is shown, of course, that the land between Sullivan's line and the line so to be run south of it was *not ceded* by those Indians by that treaty. And as, by the treaty of 1832, these same tribes have only ceded to the United States the lands lying *north of Sullivan's line*, or, in other words, north of the northern boundary line of the State of Missouri, it follows, that the strip of land intervening the *two* lines has never been ceded by the Sac and Fox tribes to the United States at all; and hence, without wrong and violence, it would not become the public domain of the United States, unless by further treaty with the Sac and Fox tribes.

But your committee consider this question of boundary has been fully settled, not only by treaty of 1832, but, so far at least as the public and Government of the United States is concerned, by repeated acts of recognition and adoption; and such as, if referable to an individual, would bind and estop him in the courts of justice.

The boundary, in fact, now put in controversy, is the boundary fixed and established by this Government. The contract of General Clark with Sprigg specially enjoins him to lay down this northern boundary of the half-breed reservation by extending Sullivan's line, and to distinguish it by suitable marks and monuments.

The public surveys north of this line have been, by instruction, conformed to it, and engrafted upon it as a base line.

The act of Congress of 23d of August, 1842, gave to the citizens of the adjoining county in Iowa Territory a right to select other school lands for those they were deprived of by this reservation, at the rate of "one entire section for each township of land in the half-breed tract." This enactment is nine years since Sprigg's survey, which *alone* ascertained what townships were on the tract.

The act of Congress of 30th of June, 1834, relinquishes in fee simple the reversionary interest of the United States in this reservation to the half breeds of the Sac and Fox nations, as "*now used by them, or some of them,*" under the treaty of 1824. The lands so "*used by them, or some of them,*" at the date of this act, were those distinctly marked out and set apart to them by Sprigg's survey more than a *year before*.

The Territory of Iowa, by its act of 16th January, 1838, for the partition of these half-breed lands, in the 24th section of said act, expressly notes them as "*included within the line now known and designated as the half-breed lands, and which terminates on the Mississippi river, near the town of Fort Madison.*" This is Sprigg's line, and with the termination as specified.

The chancery court of Lea county, (Territory of Iowa,) in which this reservation lies, in virtue of the said act of the Territory of Iowa, in the year 1841, made final a decree of partition among the claimants of this reservation, dividing the same into one hundred and one shares.

Such has been the notoriety and validation of this line—sufficient, the committee think, on every principle of law and equity, to establish it forever, even if the half breeds, as first takers, were yet the sole proprietors. But, by the act of Congress of June 30, 1834, these half breeds were invested with full power to sell their lands, and this more than a year after the Government had surveyed it, and assigned its boundaries and quantity.

It is apparent, from the decree of partition, that many purchasers, beside the memorialist, have become interested—purchasing upon the faith of all these notorious acts of approval by this Government of both the boundary and title. Shall the Government now absolve itself from all these acts of pledged or implied faith, and be permitted to become sole claimant, adverse to its treaty compact of 1832, its other several legislative acts in accordance therewith, and its own public and published surveys and boundaries? The committee suppose every principle of good faith and public policy demands that this boundary should be left undisturbed. They consider the title has been legally and equitably divested from the Government of the United States; that the land, and all the land within Sprigg's survey, has become private property; and that no act of this Government, by a resurvey of its boundary, could transmute any portion of the tract into public lands. But such act might work oppression upon the proprietors, excite distrust as to their title, and involve them in litigation. The paternal principles of this Government forbid all acts fraught with such consequences to the citizen, whose person and property it is the first and highest duty of Government to protect.

In conformity with these views, the committee recommend the repeal of the act of 3d of March, 1843, and to this end herewith report a bill.